



# SPECIES AT RISK ACT three years later

## An Interim Report by the Canadian Nature Network

### Executive Summary

The federal *Species at Risk Act (SARA)* was proclaimed in June 2003 to address the mounting threats to Canada's endangered species. As the Act's third anniversary approaches, the Canadian Nature Network (CNN) reports that *SARA* is failing to meet its objectives. Key weaknesses in the Act have been exacerbated by shallow federal implementation, reducing the Act's effectiveness in the following four ways.

**1. The legal species at risk list grows more political and less scientific each year.** The federal government has delayed listing decisions, imposed cost-benefit analyses on what should be science-based judgments, and refused to list several endangered species due to potential socio-economic consequences.

**2. Protection of critical habitat under SARA is too limited and too late.** Despite rhetoric about "safety nets", the federal government has refused to issue emergency orders to protect critical habitat on non-federal lands. And while *SARA* habitat protections are not required until recovery strategies or action plans are complete, the government has allowed 9 of 16 strategies due January 2006 to remain overdue.

**3. The federal government has failed to meet the Act's requirements to maintain a comprehensive public registry.** *SARA*'s public registry is outdated, confusing, and lacks critical documents required by law. This important tool simply does not provide the public with easy access to information.

**4. Stewardship has been left the greatest burden for saving species without a corresponding increase in funding.** Stewardship has become the federal answer to recovering species on non-federal lands. So much is expected of voluntary stewardship, yet not enough is done to mobilize and fund potential stewards.

This report calls on the federal government to choose recovery over extinction for our species at risk. Three years after the *Species at Risk Act* was enacted, Canada is failing to fulfill its duty of care toward our nation's wildlife. Decisive implementation of the Act is required to ensure Canada's species receive the protection they deserve. By following the recommendations in this report, the federal government can realize the full potential of this important legislation.

**"Canada is failing to fulfill  
its duty of care toward  
our nation's wildlife."**

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## INTRODUCTION

In April 2006, the scientific Committee on the Status of Endangered Wildlife in Canada (COSEWIC) added 32 animals and plants to Canada's species at risk list, including the white shark, endangered in Atlantic waters, the western painted turtle, endangered on the Pacific coast, and the golden-winged warbler, threatened in central Canada. Today, 529 species are at risk nationally, including 13 species already extinct.

The federal *Species at Risk Act (SARA)* was proclaimed in June 2003 to prevent further extinctions and recover species at risk. The *Act* is one of three national protection strategies, complemented by voluntary stewardship and provincial/territorial obligations under the National Accord for the Protection of Species at Risk. As the *Act's* third anniversary approaches, the Canadian Nature Network (CNN) reports that *SARA* is failing to meet its objectives in four critical ways that are leading toward extinction.

## Endangered species are denied listing under *SARA*, contrary to the *Act's* purposes.

The listing process under *SARA* is overburdened with socio-economic considerations. While *SARA* requires COSEWIC to designate species at risk, it allows the federal government to deny legal listing to any designated species it chooses.<sup>1</sup> It is only once species are legally listed under *SARA* that the protection under *SARA* applies.

### Fraser River Coho Salmon Denied Listing Under *SARA*

In April 2006, the federal government refused to list the endangered Interior Fraser River coho salmon, following significant public response from those both in favour and critical of adding the population to *SARA's* legal list. The government justified its decision as "based on uncertainties associated with changes in the marine environment and potential future socio-economic impacts on users associated with the uncertainty," and suggested that "[n]ot listing provides future management flexibility related to uncertainty about marine survival and possible difficulties in recovery if marine survival worsens." *SARA* must require a more rigorous justification for denying legal status to an endangered species! Legal listing would provide protection and recovery planning for this endangered salmon—a far more valuable benefit than the "flexibility" of political denial.



Science-based listing—the principle that listing of species at risk must be based exclusively on scientific, community and traditional knowledge—is the foundation of effective endangered species legislation. Federal obligation to justify any listing denials was intended to keep the process science-based. Unfortunately, the federal government has boldly used its discretion to deny protection to more endangered species each year.

In March 2004, the federal government burdened the listing process with cost-benefit analyses and major public consultations not required by law. One month later, it refused COSEWIC's emergency designations for two endangered BC sockeye salmon populations. In April 2006, it refused to list 10 of 12 COSEWIC-designated species, including 6 returned to COSEWIC for further consideration, and 4—three populations of Atlantic cod and the Interior Fraser River coho salmon—outright denied legal listing.<sup>2</sup> Federal justifications for these decisions imply that species will be listed under *SARA* only if listing is inconsequential: the northern bottlenose whale was listed because anticipated "costs" of listing are "minimal due to overlap with other ongoing conservation efforts and regulatory controls."<sup>3</sup>

Whether a species is at risk should not be decided through political discussion. Socio-economic considerations must help determine if and how to recover a species, but these considerations have no place in the listing process. Species at risk lists under federal, provincial and territorial laws should reflect COSEWIC designations.

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1. *SARA* lists 347 of Canada's 516 COSEWIC designated extant species at risk. The discrepancy is largely due to a delay between scientific assessment of a species and its acceptance under *SARA*, i.e., most of these 516 species will eventually be listed in law.  
2. Almost all species refused listing are aquatic. It is prohibited to harm a listed species or destroy its "residence" within federal jurisdiction, which is a mere 4% of Canada's land base, but 100% of our waters. The listing of aquatic species is thus consequential: we cannot continue to harm them anywhere.  
3. Regulatory Impact Analysis Statement <[http://www.sararegistry.gc.ca/regs\\_orders/RIAS\\_0406\\_e.cfm](http://www.sararegistry.gc.ca/regs_orders/RIAS_0406_e.cfm)>



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## SARA protection of critical habitat is too limited and arrives too late.

Approximately 75% of COSEWIC-listed species have been put at risk by loss or degradation of their habitats. Recognizing this, *SARA* promotes habitat protection through voluntary stewardship, and prohibits the destruction of critical habitat once it is identified in a recovery strategy. These strategies are due one year after listing for endangered species and two years for threatened species. However, in many cases deadlines have been extended, and critical habitat is left unprotected during this delay.<sup>4</sup> While *SARA* allows for emergency protection orders to immediately safeguard critical habitat, the federal government has thus far refused to issue any.

In January 2006, the first 16 recovery strategies required under *SARA* were due. As of May 2006, recovery plans have been approved, encompassing just 7 of the species due in January. Strategies for 105 species are due in June, an additional 16 are due in July, and another 121 are due in 2007. Every day that a recovery strategy is overdue is a day that species habitat remains unprotected.

Once identified in a recovery strategy or action plan,<sup>5</sup> critical habitat is automatically protected—but only within federal jurisdiction, a far too limited realm to provide for Canada's terrestrial species at risk. As a "safety net," *SARA* allows for federal protection orders that "can only apply on provincial or private lands if provincial legislation or other measures are not already in place to protect the species, and if cooperative stewardship measures fail."<sup>6</sup> The *Act* specifies no situation in which the safety net must be used. Protecting critical habitat is thus possible under *SARA*, but it is not required.

Habitat protection is also possible under *SARA* through voluntary stewardship, conservation agreements, or regulations to implement recovery plans. However, while the *Act* requires action plans that specify concrete recovery measures for listed endangered and threatened species, it gives no deadline for completion or implementation of these plans. Thus the *Act* dedicates considerable resources to understanding why a species is at risk and how best to recover it, without requiring that a single recovery action be taken.

As only a handful of recovery strategies are yet registered under *SARA*, we cannot judge the effectiveness of the *Act* in protecting habitat. However, the CNN finds that provincial and territorial governments have not always adequately protected critical habitat for species at risk on non-federal lands. To meet *SARA*'s goal of preventing extinction, the federal government must be more willing to implement the *Act*'s federal safety net.

### The Spotted Owl: A Federal/Provincial Partnership in Extinction

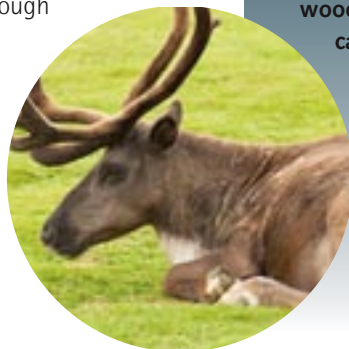
In 2003, only 14 adult spotted owls were found in BC's old-growth forests (habitat that has been 80% destroyed since the 1940s) and environmentalists petitioned for a federal emergency order to protect one of Canada's most endangered birds. The provincial government has ignored its own recovery team's recommendation to preserve enough critical habitat to recover the species to 125 pairs, opting instead for continued logging concurrent with captive breeding. While the federal Environment Minister admitted the imminent risk of spotted owl extirpation, he refused to offer a federal "safety net". Logging has since continued in the owl's habitat and in 2005, government biologists found only 6 adult pairs.



John and Karen Hollingsworth/USFWS

### No Federal Safety Net for Alberta's Woodland Caribou?

The Alberta government has failed to protect its threatened woodland caribou despite a provincial recovery plan that calls for "a moratorium on further mineral and timber resource allocation" near three herds in imminent risk of extirpation. In December 2005, conservation groups petitioned the federal government to protect the herds and their habitat. We await the federal response.



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4. Deadlines are extended to 3 and 4 years for endangered and threatened species listed at proclamation – hence recovery strategies for originally-listed endangered species are due in June 2006.

5. The recovery process first involves the preparation of a recovery strategy, and then involves writing an action plan to detail specific measures to be taken on the ground to implement the recovery strategy.

6. *SARA* Public Registry FAQ page [http://www.sararegistry.gc.ca/faq/default\\_e.cfm](http://www.sararegistry.gc.ca/faq/default_e.cfm)

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## Deadlines and Registration Requirements are Not Being Met.

The online SARA public registry was originally lauded as a key public participation tool for species at risk. Today, the registry is confusing, out of date, and missing numerous documents required by law. Even the 2004-05 SARA Annual Report is missing, making it extremely difficult for the public to learn what has been done under the Act thus far.

Exacerbating its omissions, the registry appears at times deliberately confusing. For example, its FAQ page answers the question, "How many species are at risk of extinction?" with directions to COSEWIC's web site, then later suggests that, by cross-checking the hundreds of species on SARA's legal list with COSEWIC's designations, "anyone should be able to check whether or not all the species COSEWIC determines to be at risk receive legal recognition from the government." This is hardly providing the public with easy access to information!

Given the federal government's emphasis on cooperative protection of species at risk, the public registry must be improved to better inform and engage Canadians. At a minimum, documents must be completed and registered according to legal deadlines to protect species and their habitat.

### Recovery Strategies Due January 2006

In January 2006, the first 16 recovery strategies required under SARA were due. As of May 2006, recovery plans have been approved, encompassing just 7 of the species due in January.

- Boreal felt lichen (Atlantic population) **OVERDUE**
- Margined streamside moss **OVERDUE**
- Mormon metalmark  
(Southern Mountain population) **OVERDUE**
- Oregon forestsnail **OVERDUE**
- Silver hair moss **OVERDUE**
- Spoon-leaved moss **OVERDUE**
- Streambank lupine **OVERDUE**
- Western screech-owl  
(*macfarlanei* subspecies) **OVERDUE**
- Yucca moth **OVERDUE**
- Coastal Scouler's catchfly **COMPLETE**
- Forked three-awned grass **COMPLETE**
- Howell's triteleia **COMPLETE**
- Kellogg's rush **COMPLETE**
- Kidneyshell **COMPLETE**
- Round hickorynut **COMPLETE**
- Sei whale (Pacific population) **COMPLETE**



Screech owl; Gary M. Stolz/USEFWS



Yucca moth; Cliff Wallis



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## Stewardship and Public Participation Opportunities Are Inadequate.

Species at risk listing and recovery planning do not yet adequately incorporate community knowledge. COSEWIC is attempting to remedy this by accessing, validating and incorporating such knowledge in its status assessments. This is a strong indication of the value of information held in the naturalist community—from compiled records of recent sightings of a species to historical population and habitat trends. As such information is equally important in recovery planning as in listing, recovery teams should likewise access and incorporate knowledge from the naturalist community.

Unfortunately, *SARA* has not yet increased or eased the involvement of naturalists in species at risk recovery, education or monitoring. This is so despite federal descriptions of stewardship as the cornerstone of the *Act*. Indeed, stewardship is the federal answer to recovering species on non-federal lands.<sup>7</sup> With so much expected of voluntary stewardship, mechanisms must be put in place to better inform, mobilize and fund potential stewards like those in the naturalist community.

Through the Habitat Stewardship Program (HSP) for Species at Risk, established in 2000, the federal government allocates almost \$10 million annually to conservation projects that protect habitat, mitigate threats, or help implement recovery strategies for species at risk. Valuable as this funding is, it will prove inadequate to implement the hundreds of recovery and action plans coming due in the next few years. As implementation of these plans will rely more on stewardship than regulation, federal funding opportunities must increase accordingly—through HSP and alternatives.



### Stewarding the Endangered Piping Plover

The endangered piping plover is a small, thrush-sized shorebird that nests on exposed beaches used and misused by humans. A 2002 National Recovery Plan covering both the Prairie (*circumcinctus*) and Atlantic (*melodus*) subspecies, aims for a viable plover population of 2,300 adults in 11 years. To help meet this goal, the Atlantic Piping Plover Project was developed in 2002. Under the project, biologists and coastal guardians including many naturalists survey the birds, report their numbers and locations, protect their breeding habitat, and raise community awareness. This is just one of numerous projects conserving piping plovers that have been funded by the HSP every year since its inception.

Gene Nieminen/USFWS



### Voluntary Stewardship of the Eastern Loggerhead Shrike

Only 100 pairs of the endangered eastern loggerhead shrike survive in the open grasslands of southern Ontario, Manitoba and Quebec, where intensified agriculture and development leaves fewer pastures for this handsome predator to forage in. Most of the shrike's habitat occurs on private property, where voluntary landowner activities and other recovery projects have restored or protected 12,000 acres of shrike habitat.

Dave Menke/USFWS

7. Regarding compliance with *SARA*, the federal government states, "It is anticipated that stewardship programs and voluntary actions will recover species and prevent prohibitions from being applied on private and provincial crown lands." <[http://www.sararegistry.gc.ca/faq/default\\_e.cfm](http://www.sararegistry.gc.ca/faq/default_e.cfm)>



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## Conclusions and Recommendations

Canada's species at risk require decisive implementation of the federal *Species at Risk Act*. While *SARA* has the potential to prevent extinctions, weak federal response to the *Act's* discretionary provisions could eclipse this potential. The federal government must use its discretion to choose recovery over extinction in implementing *SARA*, as recommended below.

### LISTING

The federal government should list species following COSEWIC designations, including emergency designations, and should remove cost-benefit analyses and stakeholder consultations from the listing process.

### THE PUBLIC REGISTRY

The registry must be updated to include all plans and documents within the deadlines specified under the *Act*, and revised to provide coherent and comprehensive information to engage Canadians in species at risk conservation.

### CRITICAL HABITAT

The federal government should

- (1) issue emergency protection orders for identifiable critical habitat under imminent threat prior to recovery strategy approval;
- (2) apply the federal safety net for species under imminent threat where provincial/territorial inaction can be demonstrated; and
- (3) complete recovery strategies on time and implement action plans.

### STEWARDSHIP

The HSP program and alternative funding sources should be expanded with increased funding and easier access for potential stewards, and recovery teams should seek information and assistance from the naturalist community.

## THE CANADIAN NATURE NETWORK

The Canadian Nature Network represents over 360 local and provincial nature groups with well over 100,000 individual nature lovers from coast to coast working to monitor, protect and restore nature. The CNN Species at Risk Committee coordinates the response of the naturalist community to the federal *Species at Risk Act*.

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